

volved in the Sheriff Road robbery-killing. Facts are stated in our opinion in *Jackson v. United States*, No. 16879, decided today.

Appellant was arrested shortly after 8:00 p.m. on January 17, 1961 and brought to the 14th precinct police station about 8:50. He was questioned for ten minutes in the lobby and denied all knowledge of the crime. He was then put in the cellblock. At 10:30 he was "booked". At 11:00 he was confronted by Coleman who had just made a written confession. Appellant still denied complicity. He made a non-incriminating statement at 11:15 p.m. He was questioned, partly in the absence of Coleman, from 11:15 till midnight. He still maintained his innocence. At 12:15 or 12:25 a.m. on January 18, while Detective Shirley was preparing a "lineup sheet," appellant is said to have agreed to confess. His written confession was completed at 3:00 a.m. He was brought before the United States Commissioner at 10:00 a.m.

The confession should have been excluded under the *McNabb-Upshaw-Mallory* rule. F.R.CRIM.P. 5(a); *Mallory v. United States*, 354 U.S. 449 (1957). Probably when he denied all knowledge of the crime about 9:00 p.m. after ten minutes questioning, and certainly when he did so again upon confronting Coleman at 11:00 p.m., the police should have taken him before a magistrate or else released him. As we point out in *Coleman v. United States*, No. 16880, decided today, a magistrate is regularly available at any hour. The circumstances in which appellant's statements were obtained on the morning of January 18 are inconsistent with the legislative purpose "to avoid all the evil implications of secret interrogation of persons accused of crime." *McNabb v. United States*, 318 U.S. 332, 344 (1943). Cf. *Anderson v. United States*, 318 U.S. 350, 355 (1943). "[T]he delay must not be of a nature to give opportunity for the extraction of a confession." *Mallory v. United States*, 354 U.S. at 455. We must apply the rule that "a